

### **13 CSR 35-71.020. Basic Residential Treatment for Children and Youth Core Requirements (Applicable To All Agencies)-Basis for Licensure and Licensing Procedures**

*PURPOSE: This rule describes the procedures for application for licensure, the licensing investigation and provisions for continued licensing investigations after the initial license is granted.*

*EMERGENCY STATEMENT: Section 210.493, RSMo., of HB 557 (2021) authorizes the Department of Social Services to promulgate regulations, including emergency regulations, to implement new requirements for background checks of officers, managers, contractors, volunteers with access to children, employees, other support staff and owners of Licensed Residential Care Facilities (LRCF), License-Exempt Residential Care Facilities (LERCFs) and Licensed Child Placing Agencies (CPAs). The law further authorizes the Department to promulgate regulations to implement the requirement that the Department conduct background checks on any person who has unsupervised contact with children and any adult who resides at a LERCF. The background checks are being conducted to help ensure that certain individuals who are associated with these facilities do not have a record of criminal conduct or substantiated incidents of child abuse or neglect which may pose a risk to the children served at these facilities. The background checks will include a finger-print based check of the individual's criminal record, the sexual offender registry, the Family Care Safety Registry, the Central Registry and registries of other states where the individual resided. HB 557 also requires DSS to implement requirements that residential care facilities notify DSS that they are conducting operations in Missouri. See §§210.1250 through 210.1286 RSMo. HB 557 included an emergency clause which declared HB 557 to be an emergency act within the meaning of the Missouri Constitution because immediate action is necessary to protect children, and it was necessary for the immediate preservation of the public health, welfare, peace and safety. The implementation of the background checks required in this regulation will immediately enable the Department to conduct background checks, to determine whether individuals are eligible for employment or presence at these institution and implement the new notification requirements. This regulation is part of a series of regulations which establish the general principles governing the implantation of all of the regulations governing residential care facilities in Missouri. The Department of Social Services has determined that promulgation of this regulation on an emergency basis is necessary to address the danger to public health, safety and/or welfare of children in Missouri identified by the Missouri General Assembly. The Department of Social Services therefore has a compelling governmental interest to promulgate this section on an emergency basis. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the **Missouri and United States Constitutions**. The Department of Social Services believes that this emergency regulation is fair to all interested persons and parties under the circumstances. The Department of Social Services published a draft of this emergency regulation on its website and solicited feedback from the public and stakeholders through e-mail and at public meeting held on August 5, 2021. The Department A proposed amendment covering this same material will be published in the **Missouri Register**. This emergency amendment was filed [date], effective [date], and expires [date].*

(1) Licensing Authority.

(A) Any [p]Person who desires to develop, establish, maintain or operate, or both, a residential treatment agency for children and youth, except for those persons exempt from licensing pursuant to [section 210.516, RSMo](#), must file an application for licensure form with the division and must receive a license prior to accepting any child for care.

(B) Before a license may be granted, an agency must be in compliance with [sections 210.481 - 210.536, RSMo, §§210.1250 through 210.1286 RSMo](#) and these rules.

(2) *Application Procedures* [for Licensure].

(A) **To apply for a license to operate a Licensed Residential Care Facility in Missouri the Person, or the Persons legally authorized designee, shall file an application with the Division on s forms provided by the Division.**

1. The application forms are published on the Division's website, and are incorporated by reference and made a part of this rule as published by the Department of Social Services, Children's Division, P.O. Box 88, Jefferson City, MO 65103, and on the web at **[get URL from Communications and ITSD, [date if necessary]]**. This rule does not incorporate any subsequent amendments or additions. The Person shall attach all additional supplementary materials and documentation that may be necessary to complete the required application. The Person shall submit the form with supplementary materials to the Division by e-mail at the following e-mail address: CDaskRPU@dss.mo.gov.

2. The application form shall be signed by the Person, or the Person's legally authorized designee. The Division will accept e-signatures.

(B) **The Application shall contain the following information:**

1. The name, street address, mailing address, fax number and phone number of the residential care facility.

2. The name, street address, mailing address, e-mail address and phone number of the Director, Owner and Operator of the LRCF.

3. The name, street address, mailing address, e-mail address, phone number and job title of the individual or individuals who are designated to submit the application on behalf of the residential care facility. This individual shall be an individual who is legally authorized to act on behalf of the residential care facility and to legally bind the residential care facility to the statements made and information provided in support of the application;

4. The name and description of the Person operating the residential care facility, including a statement as to whether the Person operating the residential care facility is a firm, corporation, benevolent association, partnership, association, agency, or an incorporated or unincorporated organization, regardless of the name used. If the owner or operator of the residential care facility is incorporated a corporation state the type of corporation, the state in which the corporation was incorporated in and the date of incorporation.

**5. The name and address of the sponsoring organization of the residential care facility, if applicable;**

**6. The name and address of every school attended by, or to be attended by, the children served by the residential care facility;**

**7. A certification that Officers, managers, contractors, volunteers with access to children, employees and other support staff of the residential care facility, and owners who will have access to the facilities have, or will have, completed Background Checks and have been found eligible as required in § 210.493 and 13 CSR 35-71.015.**

**(C) The residential care facility shall submit the additional documentation and information in support of the application as provided in this subsection. This information may be submitted on a form or forms provided by the Division, or it may be submitted separately as attachment(s) to the application.**

**1. Local health department inspection certificates.**

**a. The residential care facility shall successfully complete and obtain any and all local health department inspection certificates required in the jurisdiction in which the facility operates. If the residential care facility operates in more than one county or local jurisdiction, then the residential care facility shall obtain the required certificates for each facility in each location.**

**b. The residential care facility shall submit a copy of all local health department inspection certificates with the application, and shall indicate the date of the inspection and the date that each certificate expires, if any.**

**c. If there is no local or county government health department in which the residential care facility is located, or if the local or county health department will not perform a health inspection, the residential care facility shall request that decision in writing and submit that information with the application.**

**d. If the residential care facility is unable, after exercising diligent efforts, and due to no fault of its own, to obtain a local inspection certificate, then the residential care facility shall submit a statement describing the efforts made to obtain the certificate(s) and the reason why the residential care facility was unable to obtain the certificate. The residential care facility shall attach copies of any correspondence from any state, county or local jurisdictions declining to conduct the inspection.**

**2. Proof that medical records are maintained for each child. The Division will accept copies of the LRCF's administrative policy regarding the maintenance of medical records as prima facie proof that the LRCF is maintaining medical records for purposes of submitting an application. However, proof that the LRCF is maintaining medical records on each child will be subject of verification and monitoring. The LRCF shall provide the Division access to the facility upon request to inspect the medical records maintained by the LRCF on the children served by the LRCF in order to**

**verify that the medical records are being kept.** [An agency shall submit the following documents in duplicate to the division--

1. Application for licensure signed and dated by the applicant;]
- [2.] **3.** Evidence of compliance with local building and zoning requirements;
- [3]. **4.** A floor plan of the proposed site in which the specific use of each room is identified;
- [4] **5.** A signed and dated copy of the civil rights agreement;
- [5] **6.** A chart depicting the agency's organizational structure and lines of supervision;
- [6]**7.** Written policies and procedures established by the board of directors which clearly set forth the authority and the responsibilities delegated to the executive director;
- [7]**8.** A copy of the articles of incorporation, bylaws, and board roster, including the mailing address and place of employment of each member, and a list of board officers;
- [8]**9.** A proposed budget for a period of not less than one (1) year, including sources of income and/or fund raising methods;
- [9]**10.** Verification of availability of not less than three (3) months' operating capital;
- 11**[10]. A **copy of the residential care facility's** written intake policy;
- 12**[11] Written identification of specific program models or designs which shall include the methods of care and treatment to be provided;
- 13**[12]. **The [J]**job title, job description, and minimum qualifications for all staff;
- 14**[13]. A projected staffing plan for the anticipated capacity;
- 15**[14]. Written child abuse and neglect reporting policy;
- 16**[15]. Written personnel practices, including staff training and orientation;
- 17**[16]. Written discipline policy;
- 18**[17]. Written visitation policy;
- 19**[18]. Written health care policy;
- 20**[19]. Written restraint policy utilizing a recognized and approved physical restraint program;
- 21**[20]. A needs assessment conducted and submitted as evidence of need for the type and scope of program proposed. This written assessment shall include, but is not limited to:
  - A. An identification and survey of potential referral sources, existing resources, and unmet community needs;
  - B. A business plan that details the agency's proposed venture explaining the vision, mission, current status, expected needs, defined markets, and projected results;
  - C. A description of how treatment will be provided and documented and how the proposed operating site meets therapeutic needs;
  - D. A description of how the agency will be financed and how fiscal viability will be maintained; and
  - E. A description of the results of a meeting planned and hosted by the agency with key community participants with the intent of enhancing

communication, gathering information for the needs assessment, addressing interaction with community resources, and addressing community questions and comments regarding the proposed residential treatment agency for children and youth;

22[21]. Evidence of compliance with fire safety requirements of the State Fire Marshal;

[22. Documentation that the agency's water supply and sewage disposal system is currently in compliance with the requirements of the Department of Health and Senior Services if not an approved public source;]

23. Verification of a medical examination that includes tests for communicable diseases including, but not limited to, tuberculosis and hepatitis when recommended by a licensed physician for all staff, completed by a licensed physician, certified nurse practitioner, advanced practice nurse in a collaborative practice agreement with a licensed physician, or a registered nurse who is under the supervision of a licensed physician, shall be submitted within thirty (30) days of initial licensure using the form prescribed by the division;

24. **A certification that all individuals who are required to complete a background check and be found eligible for employment or presence at the LRCF as provided in §210.493 RSMo and 13 CSR 35-71.015** [Results of a check of the family care safety registry for all staff, as well as interns, volunteers, and contractors. Any employee who resides in another state and works in the state of Missouri, or who has relocated to the state of Missouri within the last five (5) years, shall provide documentation of child abuse/neglect and criminal background screening check(s) from those states. When an employee who lived in another state or states within the last five (5) years now resides in the state of Missouri, the documentation of child abuse/neglect and criminal background screening check(s) from the previous state(s) only needs to be completed upon initial employment. If the employee continues to reside in another state, the out-of-state check shall be done annually. Results of employee medical examinations and background screenings, along with family care safety registry documentation may be viewed by division licensing staff on site during routine record reviews];

25. Verification of the education, licensing credentials, and experience for all professional staff;

26. A copy of the resume for all professional and administrative staff;

27. Written description of the recreational program, and the manner in which staff are qualified and prepared to create, organize, and supervise them;

28. A copy of the annual written staff training plan;

29. A copy of the personnel manual for the agency;

30. A copy of the program manual for the agency;

31. For any agency operating a swimming pool on grounds, documentation that the pool is operated and maintained in accordance with all applicable ordinances and/or state guidelines;

32. Documentation that each operating site's food service is in compliance with the requirements of the Department of Health and Senior Services and/or any local applicable ordinances;

33. Written volunteer policies;

- 34. Written policy for the use of visiting resources;
- 35. Written confidentiality policy;
- 36. Written policy for the use of locked isolation;
- 37. Written instructions for fire, severe weather, and other emergency evacuations;
- 38. Written description of the agency's religious requirements and practices;
- 39. Written policy governing the use of medications, including psychotropic medications;
- 40. A copy of any newsletter, brochure, or flyer used by the agency for fundraising or marketing purposes;
- 41. Documentation of insurance for the agency for professional and commercial liability, worker's compensation insurance, fire and disaster insurance, and agency vehicle insurance; and
- 42. A completed, signed, and dated copy of the agency self-study on a form [prescribed] **promulgated by the division on its website, incorporated by reference and made a part of this rule as published by the Department of Social Services, Children's Division, P.O. Box 88, Jefferson City, MO 65103, and on the web at [get URL from Communications and ITSD, [date if necessary]. This rule does not incorporate any subsequent amendments or additions.**

**(D) Upon receipt of the application form and supporting documentation, the Division will send a request to the State Fire Marshal to conduct a fire and safety inspection and provide the LRCF and the Division with a copy of the approved fire and safety certificate.**

**(E) The application will be complete when the residential care facility submits a completed application with all of the required supporting documents and information to include all required inspection certificates.**

**(3) Licensing Assessment.**

**(A) When the application is complete the Division will conduct [A] a thorough assessment of the [agency shall be made by the division, including a review of the documents required in this rule and visits to the agency] to determine whether the residential care facility meets all of the requirements for licensure in compliance with the licensing law and applicable rules.**

**(B) If an applicant for licensure is determined not to be in compliance with the licensing law and applicable rules, [and/]or if the Division issues a provisional license and the residential care facility does not achieve full compliance [is not achieved] within [a] six[-] (6[-]) months of the date of the issuance of the provisional license [period, the] application [may] will be denied. A new application for licensure must be filed if the agency desires to pursue licensure.**

**(4) The License.**

- (A) Upon determination of compliance with the licensing law and applicable rules, the director shall issue a license for an initial six- (6-) month probationary term.
- (B) Following the probationary period, upon determination of continued compliance with Missouri statutes and applicable licensing rules, the director shall extend the term of the license for a period not to exceed two (2) years.
- (C) The license shall be posted in a conspicuous place on the premises of the operating site.
- (D) The number, sex, and age range of children an agency is authorized to accept for care shall be specified on the license and shall not be exceeded.
- (E) The license shall not be transferable.
- (F) A [licensed residential treatment agency] **LRCF** for children and youth may request a temporary variance from one (1) or more of the licensing requirements for a specified period of time on a form prescribed by the division that is approved or denied by the division. Approval may be granted by the division only in unusual situations when the division determines that the variance will not negatively impact child health and safety and is not under the purview of another regulatory entity. Examples may include, but are not limited to, time limited deviations in licensed capacity and age range. No variance will be granted for any licensing requirements which involve the health, safety, and welfare of children. Examples include, but are not limited to, compliance with fire and sanitary codes, food safety, building occupancy requirements, and other requirements imposed by law. In the event the licensed residential treatment agency for children and youth does not agree with the decision of the division, it may request administrative review pursuant to [13 CSR 35-71.030](#).

(5) License Amendment.

- (A) An [agency]**LRCF** shall file an application for amendment with the division on a form prescribed by the division at least sixty (60) days prior to--
  - 1. Relocation and/or address change;
  - 2. Change in the name of the **LRCF**[agency];
  - 3. Change in the capacity, gender served, and/or age range of children; or
  - 4. Any major change in the program.
- (B) These changes shall be approved by the **D**[d]ivision prior to implementation.

(6) Licensing Renewal.

- (A) [An application for licensure shall be mailed by the division to the agency.
- (B) The [agency] **LRCF** shall complete and return the application **for license renewal** to the [d]Division at least ninety (90) days prior to the expiration of the current license. **The LRCF shall utilize the forms indicated in subsection (2)(A)1 of this regulation to initiate the license renewal process. The LRCF shall attach all additional supplementary materials and documentation that may be necessary to complete the required application. The LRCF shall submit the form with supplementary materials by e-mail to the LRCF's designated division license consultant. The application form shall be signed by the Director of the LRCF or the Director's legally authorized designee. The Division will accept e-signatures.**

(B[C]) The division shall initiate action on the completed application packet prior to the expiration of the existing licensure period.

(C[D]) In addition to the completed application **form**, the **residential care facility shall submit the** following documents **with the application for license renewal**[shall be submitted]]:

1. Verification of a medical examination that includes tests for communicable diseases including, but not limited to, tuberculosis and hepatitis when recommended by a licensed physician, completed by a licensed physician, certified nurse practitioner, advanced practice nurse in a collaborative practice agreement with a licensed physician, or a registered nurse who is under the supervision of a licensed physician, for all staff working directly with children shall be submitted utilizing the form prescribed by the division;

2. A current board roster, including the mailing address and place of employment of each member and a list of board officers;

3. A summary of any significant changes to programs and copies of any resulting policies or policy changes;

4. A copy of a current organizational chart;

5. **Certification that all individuals who are required to submit to a Background Check have completed their Background Checks and have been found eligible by the Division for employment or presence at the LERCF as provided in §210.493 and 13 CSR 35-71.015;**

6. Annual results of a check of the family care safety registry for all staff, as well as interns, volunteers, and contractors. [Any employee who resides in another state and works in the state of Missouri, or who has relocated to the state of Missouri within the last five (5) years, shall provide documentation of child abuse/neglect and criminal background screening check(s) from those states. When an employee who lived in another state or states within the last five (5) years now resides in the state of Missouri, the documentation of child abuse/neglect and criminal background screening check(s) from the previous state(s) only needs to be completed upon initial employment. If the employee continues to reside in another state, the out-of-state check shall be done annually. Results of employee medical examinations and background screenings, along with family care safety registry documentation may be viewed by division licensing staff on site during routine record reviews];

- 7[6]. Evidence of current compliance with the fire and safety requirements of the State Fire Marshal;

- 8[7]. A record of monthly drills for fire and emergency evacuations which are held at different times of the day and night;

- 9[8]. Documentation that each operating site's water supply and sewage disposal system is currently in compliance with the requirements of the Department of Health and Senior Services if not an approved public source;

- 10[9]. A copy of the most recent financial audit and/or financial review [pursuant to [13 CSR 35-71.040\(5\)\(B\)](#)];

- 11[0]. A copy of the annual written staff training plan;



12[1]. Documentation that each operating site food service is currently in compliance with requirements of the Department of Health and Senior Services or any local applicable ordinance;

13[2]. A copy of the current personnel and/or program manual for the agency if there have been changes since last submitted to the licensing unit;

14[3]. For any agency operating a swimming pool on grounds, documentation that the pool is operated and maintained in accordance with all applicable local ordinances and/or state guidelines;

15[4]. A copy of the resume of all administrative and professional staff, if not previously submitted to the licensing unit;

16[5]. Documentation of insurance for the agency for professional liability and commercial liability, worker's compensation insurance, fire and disaster insurance, and agency vehicle insurance; and

17[6]. Documentation of form 990 for all non-profit agencies and Internal Revenue Service return for for-profit agencies and self-disclosure of tax liabilities, including but not limited to, all employee withholding taxes.

**(D[E]) Division staff may review the results of employee medical examinations and background screenings, along with family care safety registry during routine record reviews.**

**(E)** Upon determination of compliance with the licensing law and applicable rules, the director shall issue a license for a period not to exceed two (2) years.

**(7) License Supervision.**

(A) Division licensing consultants may make supervisory on site contacts which may or may not be scheduled to determine compliance with the licensing rules.

(B) Division licensing consultants may review personnel files including, but not limited to, criminal/child abuse/neglect back-ground screening documentation during on site reviews.

**Credits**

**AUTHORITY:** [sections 207.020, 210.493, 210.506, 210.1286 and 660.017, RSMo](#) [2000].\*

\* Original authority: [210.506, RSMo 1982](#), amended 1993, 1995.

*This rule originally filed as [13 CSR 40-71.020](#). Original rule filed Nov. 9, 1978, effective Feb. 11, 1979. Rescinded: Filed Oct. 13, 1982, effective Jan. 13, 1983. Emergency rule filed Nov. 1, 1993, effective Nov. 12, 1993, expired March 11, 1994. Emergency rule filed March 2, 1994, effective March 12, 1994, expired July 9, 1994. Readopted: Filed Nov. 1, 1993, effective June 6, 1994. Emergency amendment filed July 25, 2008, effective Aug. 4, 2008, expired Jan. 30, 2009. Moved to 13 CSR 35-71.020 and amended: Filed July 25, 2008, effective Jan. 30, 2009. Amended: Filed Dec. 16, 2013, effective June 30, 2014.*